

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON

LARRY WAYNE CANTRELL,

Plaintiff,

v.

Case No. 2:14-cv-17419

JIM RUBENSTEIN, et al.,

Defendants.

PROPOSED FINDINGS AND RECOMMENDATION

This matter is assigned to the Honorable Thomas E. Johnston, United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

Pending before the court is a Motion to Dismiss (ECF No. 45), which was purportedly filed by the plaintiff, Larry Wayne Cantrell, on February 9, 2015. However, it clearly appears from the envelope in which this Motion to Dismiss was mailed that the motion was filed by William A. LaRue, another inmate at the Mount Olive Correctional Complex ("MOCC"). The one-page motion states that the plaintiff was moving to dismiss this civil action with prejudice, because the plaintiff no longer wished to pursue the issues raised in the Complaint. The Motion to Dismiss is drafted in handwriting that differs from the other documents filed by the plaintiff in this matter.

On February 11, 2015, the defendants, by counsel, filed a Response to the Motion to Dismiss (ECF No. 46), indicating that the defendants had no objection to a voluntary

dismissal, with prejudice, of this civil action. However, on February 18, 2015, the court received a letter from the plaintiff, which is drafted in handwriting similar to the plaintiff's Complaint and other documents filed in this matter (other than the Motion to Dismiss). The letter states as follows:

On Feb. 12, 2015, I received a letter from the defendants in this matter titled Defendants' Response to Plaintiff's Motion to Dismiss with Prejudice.

I want to make it clear that I have never filed such motion and do not want my case dismissed. The defendants' response is frivolous and without merit. According to the Federal Rules of Civil Procedure, Rule 11(b), papers are not to be submitted for wrongful purpose, causing hardship, etc.

I just want to make it clear that I do not wish to have my case dismissed and most diffinately [sic; definitely] would like to continue to move forward.

2/12/15

Sincerely,
[Illegible Signature]
Larry W. Cantrell

(ECF No. 48).

Based upon these filings, it appears that William A. LaRue, a non-party, improperly attempted to file the subject Motion to Dismiss with Prejudice (ECF No. 45) without the permission, consent or knowledge of the plaintiff. The plaintiff has subsequently stated on the record that he fully intends to pursue this matter. Accordingly, it is respectfully **RECOMMENDED** that the presiding District Judge **DENY** the Motion to Dismiss with Prejudice (ECF No. 45) and permit this matter to proceed.

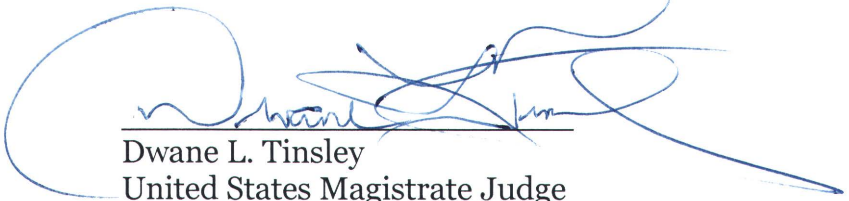
The parties are notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable Thomas E. Johnston, United States District Judge. Pursuant to the provisions of Title 28, United States Code,

Section 636(b)(1)(B), and Rules 6(d) and 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections) and three days (mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of *de novo* review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be provided to the opposing parties and Judge Johnston.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the plaintiff and to transmit a copy to counsel of record.

July 8, 2015



Dwane L. Tinsley
United States Magistrate Judge